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Before the
Federal Communications Commission
 Washington, D.C. 20554

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MAY 12 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. <u>93-107</u>
DAVID A. RINGER)	File No. BPH-911230MA
ASF BROADCASTING CORPORATION)	File No. BPH-911230MB
WILBURN INDUSTRIES, INC.)	File No. BPH-911230MC
KYONG JA MATCHAK)	File No. BPH-911230MF
SHELLEE F. DAVIS)	File No. BPH-911231MA
WESTERVILLE BROADCASTING COMPANY LIMITED PARTNERSHIP)	File No. BPH-911231MB
OHIO RADIO ASSOCIATES, INC.)	File No. BPH-911231MC
For a Construction Permit for a New FM Station on Channel 280A at Westerville, Ohio)	
To: Honorable Walter C. Miller Administrative Law Judge		

MOTION TO STRIKE

David A. Ringer, by his attorney, hereby moves to strike that portion of Westerville Broadcasting Company Limited Partnership's ("WBCLP") Integration and Diversification Statement, which is at variance with its application.

At the appropriate cut-off date, WBCLP's application made no reference to a claim for integration enhancement credit for civic participation. In its recently filed integration statement, WBCLP makes a claim for credit for civic involvement. This claim must be stricken pursuant to

Commission policy.

WBCLP filed an application for a new FM station on Channel 280A at Westerville, Ohio on December 30, 1991. Therein, in response to Section IV-B of FCC Form 301 (page 7 - June, 1989 version), WBCLP submitted Exhibit 4 (a copy of which is attached hereto as Exhibit A) which purported to outline WBCLP's proposed integration. Section IV-B of FCC Form 301 requires information with respect to proposed integration. The FCC's instructions for FCC Form 301,

Company Limited Partnership," ("WBCLP Integration Statement") wherein it stated, among other things, that Mr. Edwards, WBCLP's General Partner, "has been active in community affairs in the proposed service area since 1986." WBCLP Integration Statement at p. 2. WBCLP then lists those activities for which Mr. Edwards will claim credit.

Ringer moves to strike all of the above-outlined information provided in WBCLP's Integration Statement with respect to the purported civic activities of Mr. Edwards. Ringer requests the Presiding Officer to rule that any attempt to gain credit for claimed civic activities by WBCLP will be prohibited.

In order for mutually exclusive applicants to receive fair evaluations, there must exist a time at which applicants are enjoined from comparatively improving their position in response to the Commission's criteria. It is well established that an applicant may not upgrade its proposal subsequent to the operative cut-off date.² In this proceeding, the operative cut-off date is the date for filing amendments as-of-right, or March 9, 1992. The Commission's well established policy forbidding such upgrading especially applies when information is specifically required by an application or the Commission's

² Alexander S. Klein, Jr., 86 FCC 2d 423, 434 (1981).

rules.³ This is such a case. WBCLP has violated the Commission's policy forbidding upgrading, with the submission of its claim for civic participation. Such credit should not be permitted, and therefore, should be stricken.

WHEREFORE, in light of the foregoing, Ringer respectfully requests the Presiding Officer to issue an order striking the above-referenced portion of WBCLP's Integration Statement which provides information concerning civic activities, and specifically forbidding WBCLP from claiming credit for civic participation in the subject proceeding.

Respectfully submitted,

DAVID A. RINGER

By: 

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His Attorney

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May 12, 1993

EXHIBIT A

INTEGRATION STATEMENT

Freeman Edwards, II will be integrated into station operations on a full-time basis (40 or more hours a week) as the station's general manager. In such capacity, he will be responsible for the overall supervision of the station's operations to include financial, administrative, sales and programming.

Mr. Edwards will claim qualitative credit for his status as a Black American, and as a long time resident of Westerville, Ohio (1986 to present) and Columbus, Ohio (1984 to 1986).

CERTIFICATE OF SERVICE

I, PJ Thiessen, a secretary in the law firm of Smithwick & Belendiuk, P.C., certify that on this 12th day of May, 1993, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

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